

Court of Appeal
(Inferior Jurisdiction)

Judge Anthony Ellul

Appeal number:- 1/2009AE

David Anthony Pollina (ID 31801A) as special mandatory of Miqna Webkoo Limited, a foreign company registered in the Republic of Cyprus having Registration Number HE245926 and having address 6, Avias Elenis Building, Office 43, 1060 Nicosia, Republic of Cyprus

vs

Authority for Transport in Malta

Wednesday 16th March, 2016.

By application filed on the 22nd September 2009 applicant *noe* instituted proceedings in the Administrative Review Tribunal contesting the decision of respondent Authority dated 1st September 2009¹ to charge registration tax in terms of Article 18 (3) of the Motor Vehicles Registration and Licensing Act (Cap.368 of the Laws of Malta) on a vehicle manufactured in the year 2006 despite the fact that it was (i) registered in a member State of the European Union - the United Kingdom; (ii) property of a Company (Miqna Webkoo Limited) established in another member State of the Union – Cyprus; and (iii) intended for temporary use in Malta by the director of the Company – David Pollina, an Italian citizen residing on the island. He made a number of requests to the Tribunal:

(1) to review the said decision of the Authority and to declare instead that the importation of the vehicle in question for temporary use in Malta does not give rise to an obligation to pay registration tax on the vehicle in question;

(2) to order the Authority to desist from requesting payment of registration tax on the said car if it is brought to Malta for a temporary period which was longer than 30 days;

(3) to declare the Authority responsible for damages suffered by applicant Company as a result of their administrative decision;

(4) to liquidate such damages;

(5) to order the payment thereof in favour of applicant Company;

¹ Fol 5 of the records of the proceedings

(6) to issue any other order which it deemed fit and proper in the circumstances.

Respondent Authority raised two pleas in its reply: (i) on a preliminary basis, the lack of jurisdiction of the Tribunal *rationae materiae* since applicant's claims did not fall within the parameters of article 40 of the Authority for Transport in Malta Act; (ii) the decision of the Authority to charge registration tax on the vehicle in question was legally correct.

In a preliminary judgement dated 11th April 2011, the Tribunal (i) dismissed the preliminary plea raised by the Authority since it was based on a law that was not applicable to the merits of the case (ii) declared that the Tribunal has jurisdiction to take cognisance of applicant's first, second and sixth requests; and (iii) declared however that it does NOT have jurisdiction to take cognisance of the third, fourth and fifth requests.

By means of a final judgement dated 24th September 2012, upheld the plea on the merits raised by the same Authority and rejected applicant's first, second and sixth requests with costs including those relative to the preliminary judgement.

Applicant felt aggrieved by both judgements and filed an appeal in front of this Court limitedly to the following parts thereof:

A. *Preliminary judgement* – with respect to that part of the judgement wherein the Tribunal declared that it does not have jurisdiction and hence does not have the competence to take cognisance of the third, fourth and fifth requests.

B. *Final judgement* – with respect to that part of the judgement wherein the Tribunal upheld the plea on the merits raised by the same Authority and rejected applicant's first, second and sixth requests.

In its reply the appellate Authority rebutted the arguments raised by appellant. The parties made their oral submissions and the case was put off for judgement.

Complaint regarding the final judgement dated 24th September 2012.

Appellant laments that the Tribunal wrongly interpreted and applied the law in force at the time the court action was filed because it based itself on the wording - "*and payment of vehicle registration tax*" – which was introduced in the law after the institution of these proceedings. Therefore, the appellant contends that the Tribunal based its decision on words that were not part of the relevant provision of law.

Appellant claims that the vehicle Peugeot 307 with registration number BF55 OSO is not subject to payment of the vehicle registration tax, although it had to be registered in Malta since it was intended to remain in Malta for more than thirty (30) days.

Over the years Article 18 (3) of Cap.368 was amended as follows:

By virtue of Act VI of 2009, Article 18(3) stipulated:

"(3) Notwithstanding any other provision of this Act, any private motor vehicle registered in another Member State other than Malta made available to a person, whether or not resident in Malta, by a company or other legal entity established in a Member State other than Malta, in his capacity as employee, director, manager, shareholder or partner of the company or other legal entity, or where any registered motor vehicle made available to a person in his capacity as a selfemployed person pursuing an economic activity in a Member State other than Malta, and such registered private motor vehicle is imported or brought temporarily into Malta but is not intended to be used in Malta on a permanent basis and is not in fact used in that manner, shall be exempt from registration tax: Provided that where that motor vehicle shall remain in Malta for more than thirty consecutive days from the date of its arrival in Malta, it shall be registered with the Authority in accordance with the provisions of this Act".

This provision of law came into force on the 1st January, 2009. It is not clear the exact dated when the vehicle entered into Malta, although the court understood this event occurred during the year 2009.

Act XI of 2010 introduced the following amendment to article 18:

*"in sub-article (3) thereof, for the words "shall be exempt from registration tax" there shall be substituted the words "may be driven in Malta without the need of being registered with the Authority and without any registration tax being paid thereon" and, in the proviso to the said sub-article, immediately after the words "it shall be registered with the Authority" there shall be inserted the words **"and the appropriate registration tax paid thereon"**.*

Act V of 2012 introduced further amendments to this sub-article:-

"(3) Notwithstanding any other provision of this Act, an M1 motor vehicle or a cycle registered in another Member State that is temporarily brought into Malta shall be exempt from the requirement to be registered with the Authority and from the payment of registration tax thereon if the vehicle is brought into Malta by a person residing in Malta for his private or business use where such person - (a) is employed by, or is a director, manager, shareholder or partner of an undertaking established in another Member State which provides a vehicle as part of their contract of employment, where such vehicle is owned or leased by the undertaking, or (b) is a self-employed pursuing an economic activity in another Member State and the vehicle is principally used in another Member State: Provided that such vehicle shall not be used in Malta for more than thirty consecutive days from the date of its

entering Malta; otherwise it shall be registered with the Authority and the appropriate registration tax paid thereon in accordance with the provisions of this Act."

Although by virtue of Act XIII of 2015 article 18 (3) was deleted altogether, the Court's role is to examine whether the applicable provision of article 18 (3) of the required the payment of registration tax in addition to the vehicle registration with the Maltese Authorities.

This Court observes that according to the applicable law in 2009, although the wording "*and the appropriate registration tax paid thereon*" was not part of Article 18 (3), the law stipulated that the registration of vehicles in terms of the proviso of sub-article 3 to article 18 had to be "*in accordance with the provisions of this Act*". Thus this provision is in no way limiting its application to mere and simple registration of the vehicle. Registration had to comply with the other provisions of the Motor Vehicles Registration and Licensing Act.

As the Tribunal correctly stated in its judgement, article 2A of the Act provided that no person could have in his possession or charge any motor vehicle which had not been registered with the Authority and on which the applicable registration tax had not been paid, unless he qualified for an exemption under the Act. Registration of the vehicle in Malta includes payment of registration tax. According to Article 3 of Act VI of 2009:

*"There shall be charged and levied by the Authority on account of the Government a registration tax and a circulation licence fee at the rate or in the amount specified in this Act **on the registration** and licensing of:*

(a) every motor vehicle imported or brought into Malta.....

unless the vehicle is the subject of an exemption under this Act".

Therefore, the general rule was that **a registration tax was due on "... every motor vehicle imported or brought into Malta"**, unless the vehicle is the subject of an exemption under this Act. The exemption in terms of Article 18(3) is subject to the condition that the vehicle does not remain in Malta for more than 30 consecutive days from date of arrival, in which case it has to be registered "*... with the Authority **in accordance with the provisions of this Act***". Registration in accordance with the provisions of the Act brings about the duty to pay registration tax on the vehicle. Had the legislator not had the intention to impose registration tax on vehicles that remain in Malta for 30 consecutive days from their arrival, there would not have been any need for this proviso in Article 18(3) which deals with an exemption from registration tax.

Legal Notice 198 of 2009 on *Registration and Licensing of Motor Vehicles*, which came into effect on the 1st January 2009, in regulation 6 (5) provides –

“The registration of an imported used motor vehicle or a used motor vehicle which had been brought into Malta... shall be made by the Authority upon the issuing by the Authority of an inspection form and the payment of an inspection fee of €35 and upon the payment by the owner, importer or authorized dealer of an administrative fee of €10 payable to the Authority, and upon –

*(a) the presentation of the documents mentioned in sub-regulation (4) hereof and **upon payment of the prescribed vehicle registration tax**, if the vehicle is acquired from a Member State...”.*

Thus, the relevant applicable legislation on the matter in dispute at the time clearly required the payment of registration tax on a vehicle together with the registration thereof with the Authority.

Complaint regarding the preliminary judgement of the 11th April 2011.

Applicant argues that the Tribunal failed to give proper and due consideration to article 20 (1) of the Administrative Justice Act which states that *“The Administrative Review Tribunal shall have all such powers as are, by the Code of Organization and Civil Procedure, vested in the First Hall of the Civil Court.”* According to applicant, once the First Hall Civil Court has the power to award damages, the Administrative Review Tribunal also has the *vires* take cognisance of and decide upon the third, fourth and fifth requests relating to a request for a declaration of responsibility for damages against respondent Authority, liquidation of such damages and order for the payment thereof to applicant.

The preliminary judgement concerned the request by the appellant for damages²:-

“(3) jiddikjara lill-Awtorita’ intimata responsabbli ghad-danni sofferti mill-kumpannija rikorrenti bhala rizultat tal-agir tal-Awtorita’ intimata f’din il-kwistjoni sal-lum;

(4) jillikwida, okkorrendo bl-opera ta’ periti nominandi, l-ammonti sofferti mill-kumpannija rikorrenti in linja ta’ danni bhala rizultat tal-agir tal-Awtorita’ intimata f’din il-kwistjoni sal-lum;

(5) jordna l-hlas ta’ dawk l-ammonti hekk likwidati favur il-kumpannija rikorrenti in linja ta’ danni”.

Respondent Authority on the other hand rebutted that this article of the law is merely regulating the powers granted to the Tribunal in order to effectively control the course of the proceedings before it.

Due to what this Court has already stated with respect to the merits of appellant’s application, even if the Tribunal had jurisdiction to award damages, plaintiff’s third,

² Vide the original application filed on the 22nd September 2009.

fourth and fifth demands would have been rejected. The Court has already declared that the appellant was legally bound to pay registration tax on the vehicle BF55 0SO. In the circumstances he cannot claim damages from the respondent. Whether or not the Tribunal has jurisdiction to award damages to an aggrieved party, is in this case merely an academic issue. Therefore, this Court does not have to pronounce itself on the issue. In the letter dated 13th August 2009 which he sent to Malta Transport Authority (fol. 4) he declared that the vehicle would remain in Malta for a period "expected to be 3 years". According to what the Court stated in the first part of this judgement, registration tax was due. Irrespective of whether or not the Tribunal has jurisdiction to award damages, under no circumstances has the appellant a right to claim damages.

The court will limit itself to some comments:-

1. In terms of Article 5 and 7 of the Administrative Justice Act (Chapter 490), the Tribunal has only jurisdiction to **review an administrative act**. Article 5 (2) stipulates, "*The Administrative Review Tribunal shall have jurisdiction to review administrative acts*". Article 7 lays down, "*The Administrative Review Tribunal shall be competent to review administrative acts of the public administration*". There is no provision granting the plaintiff the right to include a request for the liquidation of damages, or that expressly provides that Article 469A(5) of Chapter 12 applies to proceedings in front of the Tribunal.
2. During the parliamentary debate, the Minister of Justice commented on Article 20: "**Clause 20³** - Powers of the Administrative Review Tribunal. **ONOR. CARMELO MIFSUD BONNICI:** *Sur President, hawnhekk qegħdin nagħtu l-istess poteri li għandha l-prim'awla tal-qorti ċivili skond il-kodiċi ta' organizzazzjoni u proċedura ċivili biex issir l-esekuzzjoni tas-sentenzi mogħtija mit-tribunal ta' revizzjoni amministrattiva kif ukoll biex jiġiharrku u jingiebu dokumenti neċessarji quddiem l-istess tribunal u biex jingħata l-ġurament.*"⁴.
3. Act IV of 2016 has clarified the position that:- "(2) *The Administrative Review Tribunal shall not have a general jurisdiction to review administrative acts which are reviewable under article 469A of the Code of Organization and Civil Procedure but it shall have jurisdiction to review those administrative acts as may be prescribed in or under this Act or any other law granting jurisdiction to the Administrative Review Tribunal over any class of administrative acts*". In terms of Article 469A(5) of the Code of Organization and Civil Procedure

³ "*The Administrative Review Tribunal shall have such powers as are, by the Code of Organization and Civil Procedure, vested in the First Hall of the Civil Court*".

⁴ Parliamentary Debate 20th February 2007, page 768.

(Chapter 12), in an action for judicial review under Article 469A the plaintiff can include a claim for damages. A provision of law that applies to proceedings concerning judicial review of administrative action filed in terms of Article 469A of Chapter 12.

For the above reasons the Court:-

- 1. Rejects the appeal filed by the appellant with regards to the judgement delivered by the Tribunal on the 24th September 2012.**
- 2. Declares that for the above-mentioned reasons, there is no scope for this Court to review the preliminary judgement dated 11th April 2011 and to state whether the Administrative Review Tribunal has jurisdiction to award damages.**

All costs are at the charge of the appellant.

Anthony Ellul